SUPREME COURT, U.S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

No. 95

JUDSON GRIFFIN AND JAMES CRENSHAW,

Petitioners,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondents.

(ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

RESPONDENT'S PETITION FOR REHEARING.

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Illinois respectfully but most earnestly asks the Court to reconsider its very important decision pronounced in this case.

I.

The record does not present the question decided by the Court.

The essence of petitioners' application in the Criminal Court of Cook County, Illinois, aside from the allegation of petitioners' indigence, is the following allegation:

> "That they verily believe that there are appealable errors and substantial infractions of constitutional rights under the State and Federal Constitutions that merit appellate review in order to insure justice in the fullest protection of the petitioners' legal and constitutional rights." (Tr. 3.)

Petitioners do not even intimate the nature of the supposed "appealable errors and substantial infractions of constitutional rights under the State and Federal Constitutions that merit appellate review." Nor do they allege any reason why they are not able to specify the character of the "appealable errors" that are supposed to inhere in the proceedings culminating in their conviction.

Illinois jurisprudence requires factual allegations. Conclusions of law are not admitted by a motion in the nature of a demurrer. Section 2 of the Post-Conviction Remedies Act requires that the petition shall "clearly set forth the respects in which the petitioner's constitutional rights are violated." (Ill. Rev. Stat. 1955, Ch. 38, Par. 827, p. 1517.)

A mere allegation that petitioners "verily believe that there are appealable errors and substantial infractions of constitutional rights" is not sufficient to precipitate the important question presented by this Court in its presently standing judgment. Mr. Justice Harlan's dissent emphasizes the "Inadequacy of the record" in this case.

They do not say that evidence that they believe to be incompetent was received, with or without providing the character of such evidence. They do not indicate that they believe themselves to be the victims of inflammatory or prejudicial argument, racial discrimination, erroneous instructions or other errors.

We submit that any application to proceed in *forma pauperis* should indicate the alleged factual basis for the proceeding that is sought to be prosecuted without the payment of costs.

This Court should, we submit, await the day when a prisoner makes a substantial and reasonably specific showing of the probable error of which he conceives himself to be the victim before answering the question sought to be raised in this proceeding.

II.

Neither due process nor equal protection requires the provision for free transcripts or the equivalent even though full appellate review is accorded to those able to furnish such transcripts.

In Mr. Justice Black's opinion it is aptly observed that "no one would contend that either a State or the Federal Government could constitutionally provide that defendants unable to pay court costs in advance should be denied the right to plead not guilty or to defend themselves in court."

But the right to plead not guilty or to defend one's self in court is a right that is intrinsically guaranteed to everyone. All of the opinions in this case recognize that there is no such intrinsic constitutional guaranty of the right to appellate review, with or without a bill of exceptions or the equivalent.

As Illinois pointed out in her original brief in this case, the law has always sanctioned imprisonment as an alternative to the payment of fines, bail in criminal cases and some other features of the administration of criminal law which are more burdensome to the poor than to the rich, when charged with crime.

Indeed, it was not until the year 1938 that free transcripts were available even in Federal courts. When they became available, they became available only by Act of Congress.

Those States that have provided for free transcripts by statutory enactment have recognized the need for legislation to accomplish the result and have plainly implied those States' understanding that but for such legislation, there would be no such right.

Thus the overwhelming, well-nigh unanimous concensus of courts and legislatures, has been that neither the due process clause, the equal protection clause, nor any other constitutional provision guarantees free transcripts or the equivalent in any case.

We submit that the Court's opinion in this case is contrary to the meaning of the Fourteenth Amendment as that meaning has been consistently understood from the date of the adoption of the amendment down to the date of this Court's opinion.

We respectfully submit that in order to reach a desirable result, the Court has expanded the sense of the terms "due process" and "equal protection" without constitutional warrant.

III.

If the Court adheres to its present judgment, the grounds of that judgment should be clarified.

There is no majority opinion in this case.

The presently standing opinions, concurring and dissent alike, leave at large two questions.

The first question left at large is whether the Court's present judgment operates prospectively or only retrospectively and if retrospectively over what period of past time is it retrospective? We submit that the Court should adopt Mr. Justice Frankfurter's intimation that the opinion should operate only prospectively. If it is to operate retrospectively, we think that there should be intimation that at least it does not operate in those cases where it is physically impossible to procure either a bill of exceptions or any equivalent thereof, such as cases in which both the court reporter and the presiding judge are dead. We realize that no such case is before this Court at this time. But all of the opinions venture to discuss such a case. Illinois deems it most important, not only to herself but to all of the States of the Union, that there be as prompt a clarification of this question as is compatible with this Court's power of adjudication.

The second question is as to whether Illinois may require as a prerequisite to the furnishing of a free bill of exceptions, bystanders' bill or other transcript of record, a substantial showing on the part of the prisoner that such a bill of exceptions or transcript, if provided, will in all probability disclose a case that merits appellate review.

Mr. Justice Frankfurter's opinion discerns the problem in the following language:

> "When a State not only gives leave for appellate correction of trial errors but must pay for the cost of its

exercise by the indigent, it may protect itself so that frivolous appeals are not subsidized and public moneys not needlessly spent. The growing experience of reforms in appellate procedure and sensible, economic modes for securing review still to be devised, may be drawn upon to the end that the State will neither bolt the door to equal justice nor support a wasteful abuse of the appellate process."

Conclusion.

For the reasons urged in Illinois' original brief, upon oral argument and in this petition, we ask this Court to reconsider and rescind its decision in this case.

But if the Court does adhere to its presently standing judgment, Illinois most respectfully asks clarification of the important problems discussed under Point III above.

Respectfully submitted,

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